

Appl. No. 10/725,248
Atty. Docket No. P-145
Resp to Office Action: January 12, 2006
Customer No. 27752

Remarks

Claims 1-12 and 14-23 are pending in the present application. Claims 13 and 24-53 have been withdrawn.

The Rejection Under 35 USC § 112, second paragraph

The Examiner has rejected Claims 1-23 under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. Regarding claims 1-23, the phrase "at least about" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. Applicants respectfully traverse this rejection based on the remarks contained herein.

In *Texas Instruments Inc. v. U.S. Int'l Trade Comm'n*, 871 F.2d 1054, 10 USPQ2d 1257 (Fed. Cir. 1989), the Court held that "the public is entitled to know the scope of the claims but must look to both the patent specification and the prosecution history...". Additionally, in *North American Vaccine, Inc v. American Cyanamid Co.*, 7 F.3d 1571, 28 USPQ2d 1333 (Fed. Cir. 1993, cert. denied, 511 U.S. 1069 (1994), the Court stated that "Whether a claim is invalid for indefiniteness depends on whether those skilled in the art would understand the scope of the claim when the claim is read in light of the specification.".

Applicants respectfully submit that the term objected to is fully defined, described and exemplified in the present specification. At Page 6 lines 17-31 of the present invention, Applicant's disclose the compositions comprise at least about 0.25% total fermentable fiber, by weight of the composition. By "total fermentable fiber" it is meant that the referenced level is determined by adding the relative amounts of each fermentable fiber present in the composition. For example, wherein a composition comprises 1% fructooligosaccharide and 0.5% beet pulp, by weight of the composition, and no other fermentable fiber, the composition comprises 1.5% total fermentable fiber, by weight of the composition. Alternatively, the present compositions comprise at least about 0.5% total fermentable fiber, at least about 1% total fermentable fiber, at least about 2% total fermentable fiber, alternatively from about 1% to about 20% total fermentable fiber, alternatively from about 1% to about 10% total fermentable fiber,

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alternatively from about 2% to about 10% total fermentable fiber, or alternatively from about 3% to about 8% total fermentable fiber, all by weight of the composition. Alternatively or additionally, wherein short chain oligofructose is utilized, it has been surprisingly discovered that, optionally, at least about 0.05% of the short chain oligofructose may be utilized, alternatively from about 0.1% to about 20%, alternatively from about 0.1% to about 10%, alternatively from about 0.1% to about 8%, alternatively from about 0.15% to about 5%, all by weight of the composition.

Applicant respectfully submits that the term objected to is fully defined, described and exemplified in the present specification. The term referred to is also a commonly used term in the art and would be readily understood by one of ordinary skill. It is not required of Applicant to redefine in the claim each term when it is sufficiently defined in the specification as in the present case.

Accordingly, it is respectfully requested that this rejection be reconsidered and withdrawn.

The Rejections Under 35 USC § 102(b)

Claims 1, 2, 6-9, 14, 15, and 18-21 are rejected under 35 USC § 102(b) as being anticipated by Farag et al. US 4,241,093. The Examiner states that Farag discloses a stable, bland, free flowing food supplement comprising sugar beet pulp and that Farag also discloses a composition comprising at least 0.25% fermentable fiber and the Examiner notes that human beings are "companion animals". Applicants respectfully traverse this rejection based on the remarks contained herein.

Under § 102, anticipation requires that all the Claim elements appear in a single prior art document. "A Claim is anticipated only if each and every element set forth in the Claim is found, either expressly or inherently described, in a single prior art reference." MPEP § 2131 citing *Verdegel Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2D 1051, 1053 (Fed. Cir. 1987). "The Identical invention must be shown in as complete detail as is contained in the ... Claim." MPEP § 2131 citing *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2D 1913, 1920 (Fed. Cir. 1989).

The present invention requires in Claim 1 a composition comprising at least about 0.25% of total fermentable fiber, by weight of the composition, wherein the composition

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is a liquid which is adapted for use by a companion animal. The Farag reference never teaches or suggests a composition comprising at least about 0.25% of total fermentable fiber. In fact, Farag does not teach or suggest fermentable fiber at any level. Additionally, Farag does not teach or suggest that the composition is adapted for use by a companion animal. Companion animal as defined by the present invention means a domestic animal. Preferably, "companion animal" means a domestic dog, cat, rabbit, ferret, horse, cow, or the like. See Page 3, Lines 15-16.

The present invention cannot be anticipated by this reference. Since Farag et al. does not disclose each and every element of the present application, it cannot as a matter of law anticipate the present application.

Reconsideration and withdrawal of the rejection on this basis are requested.

Claims 1-5 and 14-17 are rejected under 35 USC § 102(b) as being anticipated by Suzuki et al. US Publication 2002/0054923. The Examiner states that Suzuki et al. discloses an agent for preventing, inhibiting or treating hypertension, comprising two distinct components. The Examiner states the Suzuki further discloses the food fibers include beet fibers obtained from beet pulp and that when food fiber is used, it is in the form of a food or drink. Applicants respectfully traverse this rejection based on the remarks contained herein.

Under § 102, anticipation requires that all the Claim elements appear in a single prior art document. "A Claim is anticipated only if each and every element set forth in the Claim is found, either expressly or inherently described, in a single prior art reference." MPEP § 2131 citing *Verdegal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2D 1051, 1053 (Fed. Cir. 1987). "The Identical invention must be shown in as complete detail as is contained in the ... Claim." MPEP § 2131 citing *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2D 1913, 1920 (Fed. Cir. 1989).

The present invention requires in Claim 1 a composition comprising at least about 0.25% of total fermentable fiber, by weight of the composition, wherein the composition is a liquid which is adapted for use by a companion animal. Suzuki et al. does not teach or suggest that the composition is adapted for use by a companion animal. Companion animal as defined by the present invention means a domestic animal. Preferably,

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"companion animal" means a domestic dog, cat, rabbit, ferret, horse, cow, or the like. See Page 3, Lines 15-16.

The present invention cannot be anticipated by this reference. Since Suzuki et al. does not disclose each and every element of the present application, it cannot as a matter of law anticipate the present application.

Reconsideration and withdrawal of the rejection on this basis are requested.

Claims 1, 2, 4-12, 14, 15, and 18-23 are rejected under 35 USC § 102(a) as being anticipated over Cheuk et al. US Publication 2003/0099759. The Examiner states that Cheuk et al. discloses a canine pet food composition comprising meat, beet pulp in an amount of about 8wt% to about 16wt%. Applicants respectfully traverse this rejection based on the remarks contained herein.

Under § 102, anticipation requires that all the Claim elements appear in a single prior art document. "A Claim is anticipated only if each and every element set forth in the Claim is found, either expressly or inherently described, in a single prior art reference." MPEP § 2131 citing *Verdegal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2D 1051, 1053 (Fed. Cir. 1987). "The Identical invention must be shown in as complete detail as is contained in the ... Claim." MPEP § 2131 citing *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2D 1913, 1920 (Fed. Cir. 1989).

The present invention requires in Claim 1 a composition comprising at least about 0.25% of total fermentable fiber, by weight of the composition, wherein the composition is a liquid which is adapted for use by a companion animal. Cheuk et al discloses a ground loaf and a chunk in gravy composition. The composition can comprise a grain which is component (b) which can be a single grain or a mixture of grains. See Paragraph [0040]. Component (c) which includes starch, natural starch and/or carbohydrates in the presence of water will be hydrated, gelatinized and retrograded. See Paragraph [0043]. Additionally, Cheuk et al. discloses that "Although not essential to the invention, the general wt % of the composition of the canine diet can be ... Grain- about 8wt% to about 16wt%. [See Paragraph 0046 and Paragraph 0047]. Chuek et al. does not teach or suggest a liquid composition comprising at least about 0.25% of a fermentable fiber. Cheuk discloses a ground loaf and a chunk in gravy with grains at 8wt% to about 16wt%.

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The present invention cannot be anticipated by this reference. Since Cheuk et al. does not disclose each and every element of the present application, it cannot as a matter of law anticipate the present application.

Reconsideration and withdrawal of the rejection on this basis are requested.

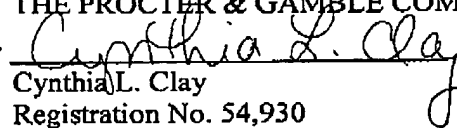
Conclusion

In light of the remarks presented herein, Applicants respectfully submit Claims 1-12 and 14-23 are allowable over the cited reference. Reconsideration and allowance are respectfully requested. In the event that issues remain prior to allowance of the noted claims, then the Examiner is invited to call Applicant's undersigned attorney for further discussion.

Respectfully Submitted,

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